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9 *Department of Health and Human Services*
Division of Public and Behavioral Health,
Cody Phinney and Jo Malay

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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 TROY MELNEK,
14 Plaintiff,

15 vs.

16 LAS VEGAS METROPOLITAN POLICE
17 DEPARTMENT, JOSEPH LOMBARDO,
18 DIVISION OF PUBLIC AND
19 BEHAVIORAL HEALTH, DEPARTMENT
20 OF HEALTH AND HUMAN SERVICES,
CODY PHINNEY, JO MALAY, and DOES I
– V, and ROE CORPORATIONS I – V,
inclusive,

21 Defendants.

Case No.: 2:23-cv-01303-GMN-MDC

**STIPULATION AND ORDER OF
DISMISSAL OF THE DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH
(DPBH), AND CODY PHINNEY AND
JO MALAY, IN THEIR OFFICIAL
CAPACITIES, WITH PREJUDICE**

22 THE FOLLOWING IS HEREBY STIPULATED by and between Defendant
23 DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND
24 BEHAVIORAL HEALTH (“DPBH”), a political subdivision of the State of Nevada, CODY
25 PHINNEY (“PHINNEY”), in her official capacity as Administrator of DPBH, and JO
26 MALAY (“MALAY”) in her official capacity as Deputy Administrator of DPBH (collectively

1 referred to as “STATE DEFENDANTS”) and Plaintiff, TROY MELNEK (“MELNEK”), by
2 and through their respective attorneys of record.

- 3 1. In MELNEK’S Second Amended Complaint, filed on February 5, 2025, against
4 State Defendants, MELNEK brought four causes of action against STATE
5 DEFENDANTS: (1) a Due Process violation pursuant to the Fourteenth
6 Amendment and the Nevada Constitution for failure to make a bed available, (2)
7 a Cruel And Unusual Punishment violation, (3) a Due Process violation pursuant
8 to the Fourteenth Amendment and the Nevada Constitution for failure to convey
9 MELNEK for treatment; and (4) an Equal Protection violation pursuant to the
10 Fourteenth Amendment and the Nevada Constitution.
- 11 2. In the Court’s order of May 10, 2024, the Court found MELNEK’S Complaint
12 against DPBH, a Nevada State agency, immune from suit for money damages
13 pursuant to the Eleventh Amendment; and as such, when MELNEK realleged
14 DPBH again in its Amended Complaint on January 15, 2025, the Court dismissed
15 MELNEK’S 42 U.S.C. §1983 claim against DPBH, with prejudice. ECF 69 5:17-
16 21. For those reasons, the parties agree to dismiss the constitutional violations
17 brought in MELNEK’S Second Amended Complaint against DPBH with
18 prejudice.
- 19 3. On January 15, 2025, the Court dismissed PHINNEY and MALAY in their
20 official capacities, with prejudice, finding MELNEK’S Amended Complaint,
21 “lump[ed] together... multiple defendants in one broad allegation failing to
22 satisfy the notice requirement of Rule 8(a)(2). “ECF 69 6:10-17; (citing *Gen-Probe,
23 Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996) (also citing
24 *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988). The Court found
25 MELNEK’S Amended Complaint contained only one allegation specific to
26 PHINNEY and MALAY – an allegation stating their job titles at DPBH – and did
27 not specifically identify “what action each Defendant took that caused Plaintiff’s
28

1 harm, without resorting to generalized allegations against Defendants as a
2 whole." ECF 69, 6: 17-23 (citing *In re iPhone Application Litig.*, No. 11-MD-02250-
3 LHK, 2011 WL 4403963, at *3 (N.D. Cal. Sept. 20, 2011)).

4 4. On January 15, 2025, the Court also found MELNEK'S Amended Complaint
5 lumped all STATE DEFENDANTS in his causes of action for cruel and unusual
6 punishment and equal protection violations. Therefore, the parties agree to
7 dismiss the constitutional violations brought in MELNEK'S Second Amended
8 Complaint against PHINNEY and MALAY, in their official capacities, with
9 prejudice.

10 IT IS HEREBY STIPULATED by and between the parties, hereto, by their
11 respective attorneys of records as follows:

12 1. MELNEK agrees, based on the Court's prior orders, that all claims for money
13 recovery against DPBH as set forth in the Second Amended Complaint be
14 dismissed.

15 2. MELNEK agrees, based on the Court's prior orders, that all claims for money
16 recovery against PHINNEY and MALAY in their official capacities, as set forth
17 in the Second Amended Complaint, be dismissed.

18 3. MELNEK agrees to file a motion to amend the caption to reflect the proper
19 STATE DEFENDANTS remaining in the case.

20 4. MELNEK'S state law claims breach of contract, negligent infliction of emotional
21 distress, and intentional infliction of emotional distress are not addressed in this
22 Stipulation.

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5. MELNEK's claims against PHINNEY and MALAY in their individual capacities are not addressed in this Stipulation.

DATED this 11th day of March 2025.

DATED this 11th day of March 2025.

AARON D. FORD
Attorney General

LAW OFFICE OF DAVID SAMPSON

By: /s/ Courtney E. Leverty
COURTNEY E. LEVERTY

By: /s/ David F. Sampson
DAVID F. SAMPSON, ESQ.

ORDER

IT IS SO ORDERED: MELNEK'S 42 U.S.C. §1983 claim against DPBH is DISMISSED, with prejudice. The 42 U.S.C. §1983 claim against Phinney and Malay in their official capacities is DISMISSED, with prejudice.

DATED this 11 day of March 2025.

GLORIA M. NAVARRO, District Judge
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 11th day of March 2025, I filed the foregoing **STIPULATION AND ORDER OF DISMISSAL OF THE DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), AND CODY PHINNEY AND JO MALAY, IN THEIR OFFICIAL CAPACITIES, WITH PREJUDICE** and served via this Court's Electronic Filing System to the following interested parties:

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